

The Director

Washington, D.C. 20505

OLC 79-0114/h

Honorable Alan K. Campbell, Director
Office of Personnel Management
Washington, D.C. 20415

Dear Mr. Campbell:

I am writing to request your assistance in a matter of great importance.

As you are aware, the unique nature of the Central Intelligence Agency and the broad authorities accorded its Director under the National Security Act of 1947 and the CIA Act of 1949 have been reaffirmed consistently by the Legislative and Executive Branches since the Agency's inception. One area in which this has particularly been the case is in connection with personnel matters.

The Director of Central Intelligence has, by virtue of section 8(a) of the CIA Act of 1949 (50 U.S.C. 403j), an exceptional and comprehensive mandate in the personnel field. The most recent reaffirmation of Executive and Congressional intent in this important area is the Civil Service Reform Act of 1978. The Agency was exempted from all of the major provisions of that law. These exemptions were granted principally because of Executive and Congressional recognition that it would be impossible for the CIA to remain effective if it were subject to laws requiring participation in government-wide personnel programs or permitting access to CIA personnel records by other agencies. The Congress recognized, moreover, that to subject the CIA to such requirements would be to directly contravene the statutory responsibility of the Director of Central Intelligence for the protection of intelligence sources and methods.

Accordingly, I am greatly troubled by section 6 of the newly proposed Classification and Compensation Act of 1979 which would, by adding a new Chapter 50 to Title 5 of the United States Code, grant the President the authority to "... establish, modify, consolidate, or abolish Federal premium pay and allowances provisions" While the drafters of this legislation exempted from the proposed authority "[premium pay and allowances provisions] ... relating to employment in foreign areas, ..." this exemption does not fully meet the special circumstances and needs of the Central Intelligence

Agency. My Legislative Counsel has made numerous requests to the Office of Management and Budget for a total exemption of the CIA from this section. As now drafted, Chapter 50 would dramatically change the existing situation. The Central Intelligence Agency is presently specifically exempted by statute from the Classification Act of 1949 (5 U.S.C. 5102), and by Civil Service Commission regulation from all of the premium pay requirements of subchapter 5 of Chapter 55 of Title 5. OMB has, unfortunately, not been responsive to our concerns.

I do not, of course, question the President's authority to modify, revamp or even abolish certain pay and allowance provisions, should he deem it desirable. As head of the Executive Branch he already has the inherent power to do so. I must, however, prevent any derogation of my ability to safeguard information whose protection is my personal statutory responsibility. As currently drafted, Chapter 50 leaves open the possibility of a delegation of Presidential authority opening sensitive CIA personnel matters to review by outside parties. This would be in contradiction to 30 years of Legislative history and Executive practice; it would also run counter to the President's expressed desire to reduce the proliferation of access to sensitive intelligence information.

On 4 June 1979 representatives of my Office of Legislative Counsel met on this matter with Messrs. Raymond C. Weissenborn and Robert M. Thrash of your Office of Policy Analysis. Your officers were sympathetic to our concerns and suggested, since the bill could not be changed prior to introduction, that I bring this matter directly to your attention so as to enlist your support in effecting a remedy.

I have enclosed for your use copies of two letters to OMB from my Legislative Counsel which contain our detailed arguments and suggested amendatory language. I hope that our staffs will be able to work together to solve the problem.

Yours sincerely,

STANSFIELD TURNER

Enclosures

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